

ORDINANCE 18-06-01

Introduced: June 4, 2018

Approved: July 2, 2018

AN ORDINANCE TO AMEND TOWN OF MIDDLETOWN CODE OF ORDINANCES TO CREATE A NEW CHAPTER 145: STORMWATER, ARTICLE I - ILLICIT DISCHARGE DETECTION AND ELIMINATION

BE IT ENACTED BY THE MAYOR AND COUNCIL OF THE TOWN OF MIDDLETOWN
(a majority of the members elected thereto concurring therein):

Section 1. That the Town of Middletown, Delaware, Code of Ordinances, is hereby amended by adding the following:

"Chapter 145, STORMWATER

ARTICLE I. Illicit Discharge Detection and Elimination.

Sections:

- I. Purpose and Intent**
- II. Definitions**
- III. Prohibited Discharges into System**
- IV. Exempt Discharges**
- V. Prohibition of Illicit Connections**
- VI. Access and Inspection/Monitoring of Properties and Facilities**
- VII. Enforcement**

I. Purpose and Intent

The purpose of this ordinance is to provide for the health, safety, and general welfare of the citizens of the Town of Middletown through the regulation of non-stormwater discharges to the storm drainage system. This ordinance establishes methods for controlling the introduction of pollutants into the municipal separate storm sewer

system (MS4) in order to comply with requirements of the National Pollutant Discharge Elimination System (NPDES) permit process.

The objectives of this ordinance are to:

1. Regulate the contribution of pollutants to the municipal separate storm sewer system (MS4) by stormwater discharges by any user;
2. Prohibit illicit discharges and connections to the MS4;
3. Prevent non-stormwater discharges, generated as a result of spills, inappropriate dumping or disposal, to the MS4; and,
4. Establish legal authority to carry out all inspection, surveillance and monitoring procedures necessary to ensure compliance with this ordinance.

II. Definitions

For purposes of this Illicit Discharge Ordinance, the following shall mean:

Best Management Practices (BMPs):

Schedules of activities, prohibitions of practices, general good housekeeping practices, pollution prevention and educational practices regarding the discharge of pollutants directly or indirectly to stormwater, receiving waters or stormwater conveyance systems. BMPs also include treatment practices, operating procedures and practices to control site runoff, spillage or leaks, sludge or water disposal or drainage from raw materials storage.

Clean Water Act:

The Federal Water Pollution Control Act (33 U.S.C. 1251 et seq.) and any subsequent amendments thereto.

Construction Activity:

Activities subject to NPDES construction permits. Currently these include construction projects resulting in land disturbance of one (1) acre or more. Such activities include but are not limited to clearing and grubbing, grading, excavating, and demolition.

Hazardous Materials:

Any material, including any substance, waste or combination thereof, which, because of its quantity, concentration or physical, chemical or infectious characteristics, may cause, or significantly contribute to, a substantial existing or potential hazard to human health,

safety, property or the environment, when improperly treated, stored, transported, disposed of or otherwise managed.

Illegal Discharge:

Any direct or indirect non-stormwater discharge to the storm drain system, except as exempted by this ordinance.

Illicit Connections:

An illicit connection is defined as either of the following:

- Any drain or conveyance, whether on the surface or subsurface, which allows any illegal discharge to enter the storm drain system, including, but not limited to any conveyances that allow any non-stormwater discharge including sewage, process wastewater and wash water to enter the storm drain system and any connections to the storm drain system from indoor drains and sinks, regardless of whether said drain or connection had been previously allowed, permitted or approved by an Authorized Enforcement Agency; or,
- Any drain or conveyance connected from a commercial or industrial land use to the storm drain system that has not been documented in plans, maps or equivalent records and approved by an Authorized Enforcement Agency.

Industrial Activity:

Activities subject to NPDES Industrial Permits as defined in 40 CFR, Section 122.26 (b)(14).

Municipal Separate Storm Sewer System (MS4):

The system of conveyances, owned and operated by the Town, designed or used for collecting or conveying stormwater.

National Pollutant Discharge Elimination System (NPDES) Stormwater Discharge Permit:

A permit issued by the US Environmental Protection Agency (EPA) or by the State of Delaware, which authorizes the discharge of pollutants to Waters of the United States, whether the permit is applicable on an individual, group or general area-wide basis. The permit contains limits on what can be discharged, monitoring and reporting requirements, and other provisions to ensure that the discharge does not hurt water quality or people's health.

Non-Stormwater Discharge:

Any discharge to the storm drain system that is not composed entirely of stormwater.

Oil:

Any kind of oil in any form, including but not limited to petroleum, fuel oil, crude oil, synthetic oil, motor oil, bio-fuel, cooking oil, grease, sludge, oil refuse, and oil mixed with waste.

Person:

Any individual, association, organization, partnership, firm, corporation or other entity recognized by law and acting as either the owner or as the owner's agent.

Pesticide:

A substance or mixture of substances intended to prevent, destroy, repel, or migrate any pest, or substances intended for use as a plant regulator, defoliant, or desiccant.

Pollutant:

Anything which causes or contributes to pollution. Pollutants may include, but are not limited to any of the following:

- Paints, varnishes and solvents;
- Oil and other automotive fluids;
- Non-hazardous liquid and solid wastes and yard wastes (including grass clippings);
- Refuse, rubbish, garbage, litter or other discarded or abandoned objects, ordinances and accumulations, so that same may cause or contribute to pollution;
- Floatables;
- Pesticides, herbicides and fertilizers;
- Hazardous substances and wastes;
- Sewage, fecal coliform and pathogens;
- Dissolved and particulate metals;
- Animal and pet waste;
- Wastes and residues that result from constructing a building or structure; and,
- Noxious or offensive matter of any kind.

Premises:

Any building, lot, parcel of land, or portion of land whether improved or unimproved including adjacent sidewalks and parking strips.

Storm Drainage System:

Publicly-owned facilities by which stormwater is collected and/or conveyed, including but not limited to any of the following:

- Roads with drainage systems;
- Town streets;
- Gutters, curbs, inlets;
- Piped storm drains;
- Pumping facilities;
- Retention and detention basins; and,
- Natural and human-made or altered drainage channels, reservoirs and other drainage structures.

Stormwater:

Any surface flow, runoff and drainage consisting entirely of water from any form of natural precipitation and resulting from such precipitation.

Stormwater Pollution Prevention Plan (SWPPP):

A document which describes the BMPs and activities to be implemented by a person or business to identify sources of pollution or contamination at a site and the actions to eliminate or reduce pollutant discharges to stormwater, stormwater conveyance systems and/or receiving waters to the maximum extent practicable, in complying with the General Permit for Discharges of Stormwater associated with Industrial Activity.

Best Management Practices Menu:

A plan required by the NPDES permit that describes how the quality of stormwater discharged from the MS4 will be controlled by incorporating activities and measureable goals such as:

- Public Education and Outreach (i.e., website, workshops, trainings);
- Public Involvement and Participation;
- Illicit Discharge Detection and Elimination;
- Construction Site Stormwater Runoff Control;
- Post-Construction Stormwater Management; and
- Pollution Prevention and Good Housekeeping.

Waste Water:

Any water or other liquid, other than uncontaminated stormwater, discharged from a facility.

III. Prohibited Discharges into System

The specific prohibitions and requirements in this section do not include all the discharges prohibited, but are provided to address specific discharges that are frequently found or are known to occur:

- A. No person shall release or allow to be released any of the following substances into the MS4:
1. Any new or used petroleum product.
 2. Any industrial waste.
 3. Any hazardous substance or hazardous waste, including household hazardous waste.
 4. Any domestic sewage or septic tank waste, grease trap or grease interceptor waste, holding tank waste, or grit trap waste.
 5. Any garbage, rubbish or other waste.
 6. Any new or used paints, including latex-based paints, oil-based paints, stains, varnish, and primers, as well as cleaning solvents and other associated products.
 7. Any yard waste that has been moved or gathered by a person.
 8. Any wastewater that contains soap, detergent, degreaser, solvent, or surfactant-based cleaner from a commercial motor vehicle wash facility; from any vehicle washing, cleaning, or maintenance at any new or used motor vehicle dealership, rental agency, body shop, repair shop, or maintenance facility; or, from any washing, cleaning or maintenance of any business or commercial or public service vehicle, including a truck, bus or heavy equipment.
 9. Any wastewater from a commercial mobile power washer or from the washing or other cleaning of a building exterior that contains soap, detergent, degreaser, solvent, or any surfactant-based cleaner.
 10. Any wastewater from commercial floor, rug, or carpet cleaning.
 11. Any wastewater from the wash down or other cleaning of pavement that contains any soap, detergent solvent, degreaser, emulsifier, dispersant, or other cleaning substance; or any wastewater from the wash down or other

cleaning of any pavement where any spill, leak, or other release of oil, motor fuel, or other petroleum hazardous substance has occurred, unless all such materials have been previously removed.

12. Any effluent from a cooling tower, condenser, compressor, emissions scrubber, emission filter, or, the blowdown from a boiler.
 13. Any ready-mixed concrete, mortar, ceramic, or asphalt-based material or discharge resulting from the cleaning of vehicles or equipment containing, or used in transporting or applying such material.
 14. Any runoff, wash down water or waste from any animal pen, kennel, fowl or livestock containment area, or any general pet wastes.
 15. Any filter backwash from a swimming pool or fountain, except that nothing in the ordinance shall be construed as to require the alteration of the filter discharge plumbing of an existing swimming pool, fountain or spa if such plumbing was compliant with applicable state, federal, and local regulations at the time of construction.
 16. Any swimming pool, fountain or spa water or other water containing a harmful level of chlorine (>0.1 parts per million).
 17. Any discharge from water line disinfection by super chlorination if it contains a harmful level of chlorine (>0.1 parts per million) at the point of entry into the MS4 or surface waters.
 18. Any contaminated runoff from a vehicle wrecking or storage yard.
 19. Any substance or material that will damage, block, or clog the MS4.
 20. Any release from a petroleum storage tank (PST), or any leachate or runoff from soil contaminated by a leaking PST; or any discharge of pumped, confined, or treated wastewater from the remediation of any such PST release, unless the discharge has received an NPDES permit from the state.
 21. Any other discharge that causes, or contributes to causing, the Town to violate a state water quality standard, the Town's NPDES permit, or any state-issued discharge permit for discharges from its MS4.
- B. No person shall release or cause to be released into the MS4 any harmful quantity of sediment, silt, earth, soil, or other material associated with clearing, grading, excavation or other construction activities in excess of what could be retained onsite or captured by employing sediment and erosion control measures, except as allowed for in conformance with Section IV (Exempt Discharges).

- C. No person shall use pesticides, herbicides, or fertilizers except in accordance with manufacturer recommendations. Pesticides, herbicides and fertilizers shall be stored, transported and disposed of in a manner to prevent release to the MS4.
- D. No person shall tamper with, destroy, vandalize, or render inoperable any BMPs that have been installed for the purpose of eliminating or minimizing pollutant discharges, nor shall any person fail to install or fail to properly maintain any BMPs that have been required by the Town or by other local, state, or federal jurisdictions.

IV. Exempt Discharges

Unless identified as a significant source of pollutants to waters of the state, the following non-stormwater discharges are examples of activities allowed to enter the MS4. Other activities may apply if substantiated by permittees within the BMP Menu:

- Water line flushing performed by a government agency.
- Diverted stream flows.
- Rising groundwater.
- Uncontaminated groundwater infiltration to separate storm sewer.
- Uncontaminated pumped groundwater.
- Discharges from potable water sources.
- Foundation drains.
- Air conditioning condensate.
- Irrigation water.
- Springs.
- Water from crawl space pumps.
- Footing drains.
- Individual residential vehicle washing.
- Flows from riparian habitats and wetlands.
- Dechlorinated swimming pool discharges (< 1 ppm).
- Discharges or flows from firefighting activities.
- Other allowable discharges to consider: Street wash waters; and, dye testing for the purpose of investigating illicit connections or discharges.

V. Prohibition of Illicit Connections

No person shall discharge or cause to be discharged through an illicit connection to the MS4 operated by the Town any domestic sewage, non-contact cooling water, process wastewater, or other industrial waste (other than stormwater).

- A. The construction, use, maintenance or continued existence of illicit connections to the storm drain system is prohibited.
- B. This prohibition expressly includes, without limitation, prior illicit connections, regardless of whether the connection was permissible under law or practices applicable or prevailing at the time of connection.
- C. A person is considered to be in violation of this ordinance if the person connects a line conveying sewage to the MS4 or allows such a connection to continue.
- D. Any owner or person responsible for a property or premises that is or may be the source of an illicit discharge, shall be required to implement, at the owner's or person's expense, the BMPs necessary to prevent the further discharge of pollutants to the MS4. Compliance with all terms and conditions of a valid NPDES permit authorizing the discharge of stormwater associated with industrial activity, to the extent practicable, shall be deemed compliant with the provisions of this section.

VI. Access and Inspection/Monitoring of Properties and Facilities

Right of Entry:

When any Code Official has reasonable cause to believe that a code violation exists, or when entry is required for periodic inspections and monitoring to determine compliance, then they are authorized to enter the structure or premises at reasonable times to inspect. Prior to inspection, the Code Official must make reasonable efforts to locate the owner or other person having charge or control of the structure or premises to request entry. If entry is refused or not obtained, the Code Official is authorized to pursue recourse as provided by law.

VII. Enforcement

- A. In the event the Town finds that a person has violated a requirement of this ordinance, a written Notice of Violation (NOV) shall be issued to the responsible person. Such NOV may require without limitation the following:

- Performance of monitoring, analyses, and reporting;
- Elimination of illicit connections or discharges;
- Cease and desist of the violating discharges, practices, or operations;
- Abatement or remediation of stormwater pollution or contamination;
- Restoration of any affected property;
- Payment of a fine to cover administrative and remediation costs; and,
- Implementation of source control or treatment BMPs.

- B. If abatement of a violation and/or restoration of the affected property is required, the NOV shall set forth a deadline within which such remediation or restoration must be completed. Said NOV shall further advise that, should the violator fail to remediate or restore within the established deadline, the work will be done by a designated government agency or a contractor, and the expense thereof shall be charged to the violator.
- C. The Town, at its discretion, may file charges in Justice of the Peace (JP) Court for violating this ordinance of the Town Code. If needed, the Town will contact the Department of Natural Resources and Environmental Control (DNREC).

Appeal of Notice of Violation (NOV):

Any person receiving an NOV may appeal the determination of the authorized enforcement agency to the Mayor and Council of Middletown. The notice of appeal must be received within 10 days from the date of the NOV. A hearing on the appeal shall take place within 15 days from the date of receipt of the NOV. The decision of the Mayor and Council shall be final.

Enforcement Measures after Appeal:

If the violation has not been corrected pursuant to the requirements set forth in the NOV, or, in the event of an appeal, within 15 days of the decision of the Mayor and Council to uphold the decision of the authorized enforcement agency, representatives of the authorized enforcement agency shall enter upon the subject private property and are authorized to take any and all measures necessary to abate the violation and/or restore the property. It shall be unlawful for any person, owner, agent or person in possession of any premises to refuse to allow the government agency or designated contractor to enter upon the premises for the purposes set forth above.

Cost of Abatement of Violation:

Within 10 days after abatement of the violation, the owner of the property will be notified of the cost of abatement, including administrative costs. The property owner may file a written protest objecting to the amount of the assessment within 10 days. If the amount due is not paid within a timely manner as determined by the decision of the Town or by the expiration of the time in which to file an appeal, the charges shall become a special assessment against the property and shall constitute a lien on the property for the amount of the assessment. Any person violating any of the provisions of this ordinance shall become liable to the Town by reason of such violation. The liability shall be paid in not more than 12 equal payments and shall also include per- annum interest on the total amount due, computed on the basis of the amortized amount outstanding at the rate provided by 6 Del. C. § 2301.

Injunctive Relief:

It shall be unlawful for any person to violate any provision or fail to comply with any of the requirements of this ordinance. If a person has violated or continues to violate the provisions of this ordinance, the authorized enforcement agency may petition for a preliminary or permanent injunction restraining the person from activities that would create further violations or compelling the person to perform abatement or remediation of the violation.

Violations Deemed Public Nuisance:

In addition to the enforcement processes and penalties provided, any condition caused or permitted to exist in violation of any of the provisions of this ordinance is a threat to public health, safety, and welfare, and is declared and deemed a nuisance, and may be summarily abated or restored at the violator's expense, and/or a civil action to abate, enjoin, or otherwise compel the cessation of such nuisance may be taken.

Criminal Prosecution:

Any person who has violated or continues to violate this ordinance shall be liable to criminal prosecution to the fullest extent of the law, and shall be subject to a criminal penalty of \$200 per violation per day and/or imprisonment for a period of time not to exceed 120 days. The authorized enforcement agency may recover all attorneys' fees, court costs and other expenses associated with enforcement of this ordinance, including sampling and monitoring expenses.

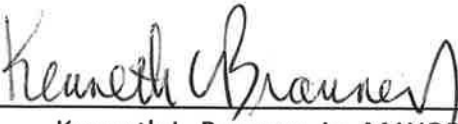
Remedies Not Exclusive:

The remedies listed in this ordinance are not exclusive of any other remedies available under any applicable federal, state or local law, and it is within the discretion of the authorized enforcement agency to seek cumulative remedies."

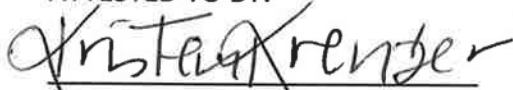
Section 2. This Ordinance shall become effective immediately upon passage.

ADOPTED THIS SECOND DAY OF July, 2018.

(SEAL)


Kenneth L. Branner, Jr., MAYOR

ATTESTED TO BY:


WITNESS, TOWN OF MIDDLETOWN